

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.30.502, 17.30.615,)	PROPOSED AMENDMENT
17.30.619, 17.30.651,)	
17.30.653, 17.30.656,)	(WATER QUALITY)
17.30.657, 17.30.702,)	
17.30.715, 17.30.1001,)	
17.30.1006, and 17.30.1007)	
pertaining to water use)	
classifications and department)	
Circular WQB-7)	

TO: All Concerned Persons

1. On January 16, 2004, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., January 5, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The rules proposed to be amended provide as follows. The proposed amendments to department Circular WQB-7 can be accessed through the Division's web site at www.deq.state.mt.us/wqinfo/Standards/Index.asp, or a copy may be obtained by contacting Christian Levine, Planning, Prevention and Assistance Division, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by emailing clevine@state.mt.us; or by telephone (406) 444-3071.

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Circular WQB-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.615 WATER-USE CLASSIFICATIONS AND DESCRIPTIONS -
CONSTRUCTED DITCHES, SEASONAL AND SEMI-PERMANENT LAKES AND
EPHEMERAL STREAMS (1) through (1)(h) remain the same.

(2) This rule does not classify any specific water body. Prior to reclassifying a specific water body ~~being~~ classified in ARM 17.30.607 through 17.30.614 under one of the water-use classifications identified in (1)(a) through (h) and before the U.S. environmental protection agency's approval of the water body's revised classification, a use attainability analysis must be conducted in accordance with 40 CFR 131.10(g), (h) and (j).

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.619 INCORPORATIONS BY REFERENCE (1) The board hereby adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive and harmful parameters;

(b) through (2) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.651 D-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified D-2:

~~(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

(b) and (c) remain the same, but are renumbered (c) and (d).

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.653 E-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified E-2:

~~(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

(b) and (c) remain the same, but are renumbered (c) and (d).

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.656 E-5 CLASSIFICATION STANDARDS (1) Waters classified E-5 are to be maintained suitable for agricultural purposes, secondary contact recreation, saline tolerant aquatic life and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-5:

(a) remains the same.

(b) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml and 10% percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml-;

(c) changes in the water quality must support existing and designated uses.

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.657 F-1 CLASSIFICATIONS STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified F-1:

~~(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

(b) and (c) remain the same, but are renumbered (c) and (d).

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.702 DEFINITIONS ~~Unless the context clearly states otherwise, the~~ The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter."):

(1) through (23) remain the same.

(24) The board hereby adopts and incorporates by reference:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters; and

(b) and (c) remain the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.715 CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) through (3) remain the same.

(4) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.1001 DEFINITIONS ~~For the purpose of this subchapter, the~~ The following definitions, in addition to those in 75-5-103, MCA, ~~will~~ apply throughout this subchapter:

(1) through (15) remain the same.

(16) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

17.30.1006 CLASSIFICATIONS, BENEFICIAL USES, AND SPECIFIC STANDARDS FOR GROUNDWATERS (1)(a) Class I groundwaters are those groundwaters with a natural specific conductance less than or equal to 1,000 microSiemens/cm at 25°C.

(b) through (b)(v) remain the same, but are renumbered (a) through (a)(v).

(c) through (c)(iii) remain the same, but are renumbered (b) through (b)(iii).

(2)~~(a)~~ Class II groundwaters are those groundwaters with a natural specific conductance that is greater than 1,000 and less than or equal to 2,500 microSiemens/cm at 25°C.

(b) through (b)(v) remain the same, but are renumbered (a) through (a)(v).

(c) through (c)(iii) remain the same, but are renumbered (b) through (b)(iii).

(3)~~(a)~~ Class III groundwaters are those groundwaters with a natural specific conductance that is greater than 2,500 and less than or equal to 15,000 microSiemens/cm at 25°C.

(b) through (b)(iv) remain the same, but are renumbered (a) through (a)(iv).

(c) through (c)(ii) remain the same, but are renumbered (b) through (b)(ii).

(d) remains the same, but is renumbered (c).

(4)~~(a)~~ Class IV groundwaters are those groundwaters with a natural specific conductance greater than 15,000 microSiemens/cm at 25°C.

(b) remains the same, but is renumbered (a).

(c) through (c)(iii) remain the same, but are renumbered (b) through (b)(iii).

(d) remains the same, but is renumbered (c).

(5) and (6) remain the same.

(7) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-301, 80-15-105, 80-15-201, MCA

IMP: 75-5-301, 80-15-201, MCA

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) through (2) remain the same.

(3) The board hereby adopts and incorporates by reference the following publications:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards", ~~December 2002~~ January 2004 edition;

(b) through (4) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing amendment of ARM 17.30.651, 17.30.653, 17.30.656 and 17.30.657, classification standards for ditches, ephemeral and low flow streams, in response to a disapproval action by the United States Environmental Protection Agency (USEPA). The USEPA has a mandatory duty to review and approve water quality standards adopted by individual states. EPA, during its recent review (at the national and regional level), objected to the "level

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of protection" provided for aquatic life in the new D-2, E-2, E-5 and F-1 classes (ARM 17.30.651, 17.30.653, 17.30.656 and 17.30.657, respectively). The specific water-use classifications and descriptions for those classes in ARM 17.30.615 were also disapproved. Normally the USEPA is required to promulgate approvable standards following a disapproval action. However, the Region 8 EPA and the Department have been working together to find a solution since the Department made its review submission in November 2002. The Board's proposed amendments are the result of those discussions and the USEPA has indicated that it would approve the Board's proposed amendments.

The proposed amendments include the addition of chronic aquatic life standards to the D-2, E-2 and F-1 classes with a provision for modification or removal of specific non-priority pollutant standard(s), after the completion of a Use Attainability Analysis (UAA). The Board proposes to add a "saline tolerant aquatic life" use to the E-5 class and a narrative standard that "changes in water quality must support existing and designated uses." The Board also proposes to remove (3) in the D-2, E-2, E-5 and F-1 classifications. Section (3) removed the application of ARM 17.30.637(1)(d) and (2) that pertained to aquatic life. Retaining this exclusion would be in conflict with the proposed addition of chronic aquatic life standards for these classes. The classifications and standards, if amended as proposed, will be functionally equivalent as those classifications and standards effective August 16, 2002, except that more emphasis will be placed on the UAA which will be the vehicle to modify or remove non-priority pollutant standards (i.e., ammonia).

Should the Board decide not to make the proposed amendments to the disapproved standards, or to adopt amendments that would not meet USEPA approval, the USEPA would be required by the federal Clean Water Act to promulgate approvable standards. The effect would be to have two sets of standards for the same waterbody type. In the MPDES permitting process the more stringent federal standards would likely be used to meet USEPA requirements. The corresponding state standards would not be used and would create confusion in the regulated community.

The Board is also proposing to amend Department Circular WQB-7 to indicate which of the listed aquatic life standards are an EPA priority pollutant or a non-priority pollutant. The proposed amendment will help clarify which standards apply and which standards may be modified by the classification standards described above. Not indicating which aquatic life standards are priority pollutants or non-priority pollutants will cause the public to contact the Department for each specific parameter, or possibly inappropriately attempt to modify a standard for a parameter through a Use Attainability Analysis.

The Board is proposing the amendment of ARM 17.30.502, 17.30.619, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007 to update the incorporations by reference of

Department Circular WQB-7, which contains Montana's numeric water quality standards. Amending these rules that reference WQB-7 is necessary to adopt the revised version of the Circular.

The Board is proposing the amendment of ARM 17.30.615 to improve the readability of the statement that a Use Attainability Analysis must be completed and approved by the USEPA before reclassification. The proposed amendments are necessary to clarify the meaning of the rule.

The Board is also proposing to amend ARM 17.30.702 and 17.30.1001 to make the introductory language consistent with other definition rules in this chapter.

The Board is proposing to amend ARM 17.30.1006 to make the section numbering conform to the proper rule formatting style of the Secretary of State's office.

The proposed amendments will not change the content or meaning of the rules. The proposed amendments will make the rule consistent with other rules and facilitate proper citation of the rules.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us" and must be received no later than 5:00 p.m., January 23, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

JAMES M MADDEN, Rule Reviewer

Certified to the Secretary of State, _____, 2003.